the sale of their respective shares in the bank. The terms and conditions of the agreement are confirmed in a letter dated 5th May, 1968 written by the plaintiffs' former solicitors to the defendants' former solicitors. The plaintiffs claim for specific performance of the agreement and a permanent injunction.

Mr. Chelliah for the defendants drew my attention to the terms and conditions of the said agreement which he says are not capable of specific performance. If that is so, he argues that an interim injunction does not lie. He relies on the provisions of section 20(a), (b), (c), (d) of the Specific Relief (Malay States) Ordinance, 1950 and the averment that the defendants no longer hold the requisite number of shares. He submits that if he succeeds on any of these grounds he is entitled to have the *ex parte* injunction set aside.

The principle of law enacted in that section is not assailable but I am doubtful of its application to the present proceeding. It would mean that a successful applicant for an interim injunction to preserve the matters in *status quo* on the facts relied by him can have that order dissolved or varied on extraneous facts. In my view the sole object of an interim injunction would therefore be defeated. I have no doubt that at the proper time and place Mr. Chelliah's arguments would be given due consideration but I think this is not such an occasion.

In order to dissolve or vary an *ex parte* injunction the defendants must satisfy the court that the facts upon which the injunction was granted no longer exist or that it was obtained by misrepresentation or suppression of material facts. We are here concerned with the former. The said shares are not available in the open market. That is not disputed. Mr. Chung for the plaintiffs relies on the proposition that the court can order specific performance of an agreement for the sale of shares which are not available in the open market. In *Duncuft* v. *Albrecht* [1] the court decreed specific performance of an agreement for the sale of railway shares which were limited in number and not always to be had in the open market. But where the shares in question are such that they can be easily obtained from the open market, so that the loss can easily be quantified in money, the court will not grant specific performance of the contract (see *Re Schwabacher, Stern* v. *Schwabacher, Koritschoner's Claim* [2]). Applying that it is beyond doubt that the agreement to transfer the bank's shares which are not available in the open market can be specifically enforced, for there is no standard for ascertaining the actual loss which would have been caused by its non-performance (see section 11). Here the inconvenience caused to the plaintiffs would be irreparable and could not be remedied by damages.

The defendants have not established that these circumstances have now changed.

Mr. Chung has also brought to my notice the delay in filing this application which was made some six and a half months after the *ex parte* injunction. In my view the time at which this application was made would by itself be an answer to the summons. They had ample facilities to set aside the *ex parte* injunction. They had thought fit to acquiesce in it for a period of some six and a half months. If it is a matter of discretion and the question before me is whether under all the circumstances of this case it is expedient and proper to refuse the intervention of this court and permit the parties to argue the case fully at the trial, the date is most important.

In the circumstances of the case I do not propose to exercise my discretion in favour of the defendants. Costs to the plaintiffs in any event.

Application dismissed.

Solicitors: *Chung & Co.; P.S. Moorthy.*

PUBLIC PROSECUTOR v. LAU SING NGIN

[A.Cr.J. (Wee Chong Jin C.J.) April 23, 1969]

[Singapore—Magistrate's Appeals Nos. 120 and 158 of 1968]

Criminal Law and Procedure — Undesirable publications — Possession of prohibited publication — Proof of possession — Presumption of knowledge of contents and nature of publication — Undesirable Publications Act, 1967, s. 4(2) & (3).

In this case a girl of 19 had been convicted of having possession of a prohibited publication. The facts were that she was riding as a pillion rider on a motor cycle ridden by a friend. The police stopped and searched them and in a plastic bag on the lap of the accused found a song booklet which was a prohibited publication. The accused said the bag did not belong to her and she did not know the contents of the bag. She was convicted but the magistrate gave her a conditional discharge for twelve months. The Public Prosecutor appealed against the order of conditional discharge and the accused cross-appealed against the conviction.

Held, allowing the appeal of the accused: the prosecution in this case had not discharged the onus of proving that the accused had possession of the contents of the bag which was under her control.

MAGISTRATE'S APPEAL.

Isaac Paul Ratnam (Deputy Public Prosecutor) for the Public Prosecutor.

Lim Teck Hui for the respondent.

Wee Chong Jin C.J.: The accused, a girl of 19, was charged with having in her posses-

sion, without reasonable excuse, a prohibited publication, an offence punishable under section 4(2) of the Undesirable Publications Act 1967. She was found guilty and was given a conditional discharge for twelve months.

The Public Prosecutor now appeals against the order of conditional discharge and the accused has cross-appealed against her conviction.

The facts are simple. The accused was a pillion rider on a motor cycle ridden by a friend. They had together been at the premises of a musical society. At the junction of Arab Street and Victoria Street they stopped, because of the traffic lights, alongside a stationary car in which were four police officers, who were on rounds in a police staff car. One of the police party, a detective corporal, noticed the accused had on her lap a blue plastic bag, the strap of which she held with her left hand, whilst under her right arm was a musical instrument, a cymbal. When the traffic lights turned green the motor cycle turned left into Victoria Street and the detective corporal instructed the driver of the police car to intercept the motor cycle because he thought they were behaving in a suspicious and frightened manner.

He identified himself to the accused and her companion as a police officer and searched the contents of the blue plastic bag. Among other documents in this bag was a song booklet which is a prohibited publication.

The accused in her defence stated that she did not have the plastic bag on her lap. She said the bag was not hers but belonged to her companion, the rider, and that it was hanging from the handle of the motor cycle. She denied knowledge of the contents of the plastic bag. The rider of the motor cycle gave evidence that the bag belonged to him, inside which was a a jacket, toothbrush and toothpaste and that it was hanging from the handle of the motor cycle.

The magistrate accepted the prosecution evidence that the plastic bag was on the lap of the accused and convicted her. In his grounds of decision he stated:—

"The defence only disputed the facts established by the prosecution as to the place where the bag was found. Other than denying ownership, no where in her evidence did the accused say she did not know the contents of the booklet. The presumption which arose under section 4(3) therefore was unrebutted. Furthermore, no reasonable excuse was given by the accused as to how she had the booklet in her possession. No doubt was raised and the defence had failed to rebut the prosecution case. I therefore convicted the accused."

Section 4(2) and (3) of the Undesirable Publications Act 1967 provides thus:—

"4(2) Any person who without reasonable excuse has in his possession any prohibited publication or any extract therefrom shall be guilty of an offence and shall be liable for a first offence to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars or to both such imprisonment and fine, and for a subsequent offence to imprisonment for a term not exceeding two years.

(3) In any proceedings against any person for an offence under subsection (2) of this section such person shall be presumed, until the contrary is proved, to have known the contents and the nature of the contents of any publication immediately after such publication came into his possession."

The presumption under section 4(3) relates to knowledge of the contents and nature of the contents of any publication immediately after such publication came into the possession of a person accused of any offence under section 4(2). There is no presumption that such an accused person knows the contents of a bag which is under his or her control. Nor is there any presumption that an accused person who has control of a bag has possession of the contents of the bag. The onus was therefore on the prosecution to prove that the accused had possesson of the contents of the bag which was under her control. Once that onus was discharged the prosecution can then rely on the presumption under section 4(3).

The magistrate clearly misdirected himself on the element of possession of the contents of the blue plastic bag and furthermore he misdirected himself when he stated that the accused "no where in her evidence . . . . say she did not know the contents of the booklet". The record clearly discloses that she denied any knowledge of the contents of the blue plastic bag and it must necessarily be inferred that she denied knowledge of the contents of any publication found in it.

I would accordingly allow the appeal of the accused and quash the conviction.

Appeal of accused allowed. Conviction quashed.

Solicitors: *Laycock & Ong.*

CHARJIT SINGH TULSI v. TEO KIM KOW

[A.C.J. (Wee Chong Jin C.J.) April 24, 1969]

[Singapore — District Court Appeal No. 17 of 1868]

Practice and Procedure — Subordinate court — Service — Person to be served acting in person — Notice of hearing sent by ordinary post — Service held to be improper — Instalment order set aside — District Court Rules, 1941, O. 12 r. 3(1)(b).

The defendant/respondent applied to the Civil District Court for an order that the amount unpaid under a judgment debt be paid by instalments. The notice of hearing was posted to the appellant/plaintiff, who acted in person, by ordinary post. At the hearing before the 3rd District Judge, the appellant/plaintiff was not present and an instalment order was